

105TH CONGRESS  
2D SESSION

# H. R. 3539

To amend the Radiation Exposure Compensation Act to provide for payment of compensation to individuals exposed to radiation as the result of working in uranium mines and mills which provided uranium for the use and benefit of the United States Government, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1998

Mr. REDMOND (for himself, Mr. SKEEN, and Mr. SCHIFF) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Radiation Exposure Compensation Act to provide for payment of compensation to individuals exposed to radiation as the result of working in uranium mines and mills which provided uranium for the use and benefit of the United States Government, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE AND REFERENCE.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Radiation Workers Justice Act of 1998”.

1       (b) REFERENCE.—Whenever in this Act an amend-  
2   ment or repeal is expressed in terms of an amendment  
3   to, or repeal of, a section or other provision, the reference  
4   shall be considered to be made to a section or other provi-  
5   sion of the Radiation Exposure Compensation Act.

6       (c) FINDINGS.—In amending the Radiation Exposure  
7   Compensation Act, the Congress finds that—

8           (1) since the passage of the Radiation Exposure  
9   Compensation Act in 1990, additional scientific in-  
10   formation has become available to support the view  
11   that criteria imposed upon qualifications for com-  
12   pensation for uranium miners are too restrictive and  
13   exclude individuals who have suffered injury as a re-  
14   sult of work performed for the use and benefit of the  
15   United States Government;

16          (2) documentation requirements to provide a re-  
17   construction of a uranium miner's work history and  
18   radiation exposure in order to qualify for compensa-  
19   tion have proved too burdensome and unfair and are  
20   thus in need of modification;

21          (3) miners working in aboveground uranium  
22   mines and uranium millers should be provided com-  
23   pensation similar to that for underground uranium  
24   miners where such individuals have suffered injury  
25   and death as a result of work performed for the pri-

1       mary use and benefit of the United States Govern-  
2       ment; and

3           (4) compensation should be provided to ura-  
4       nium miners whose constitutional rights were vio-  
5       lated as a result of their having been, without their  
6       knowledge or consent, intentionally placed at unnec-  
7       essary risk and subsequently studied under false  
8       pretenses by United States public health officials  
9       and other agencies of the Federal Government.

10 **SEC. 2. TRUST FUND.**

11       Section 3(d) is amended by striking “of this Act” and  
12       inserting “of the Radiation Workers Justice Act of 1998”.

13 **SEC. 3. AFFECTED AREA.**

14       Section 4(b)(1) is amended by striking “and” at the  
15       end of subparagraph (B) and by adding after subpara-  
16       graph (C) the following:

17               “(D) those parts of Arizona, Utah, and  
18       New Mexico comprising the Navajo Nation Res-  
19       ervation which were subjected to fallout from  
20       nuclear weapons testing conducted in Nevada;  
21       and”.

22 **SEC. 4. URANIUM MINING AND MILLING.**

23       (a) **MILLING.**—Section 5 is amended—

24           (1) in the section heading by adding “**OR**  
25       **MILLING**” after “**uranium mining**”; and

1           (2) in subsection (a), by inserting after “Utah”  
2           the following: “or any other State in which uranium  
3           was mined or milled”.

4           (b) MINES.—Section 5(a) is amended by striking “a  
5           uranium mine” and inserting “a uranium mine, including  
6           a mine located above ground and an open pit mine in  
7           which uranium miners worked, or a uranium mill”.

8           (c) DATES.—Section 5(a) is amended by striking  
9           “January 1, 1947, and ending on December 31, 1971”  
10          and inserting “January 1, 1942, and ending on December  
11          31, 1990”.

12          (d) REDEFINITION OF PERIOD OF EXPOSURE, EX-  
13          PANSION OF COVERAGE, INCREASE IN COMPENSATION  
14          AWARDS, AND REMOVAL OF SMOKING DISTINCTION.—  
15          Section 5(a) is amended by striking paragraph (1) and  
16          all that follows through clause (ii) and inserting:

17               “(1) was exposed to 40 or more working level  
18               months of radiation or worked in such uranium  
19               mines or mills for a period of at least one year and  
20               submits written medical documentation that such in-  
21               dividual, after such exposure, developed lung cancer,  
22               or

23               “(2) was exposed to 40 or more working level  
24               months of radiation or worked in such uranium  
25               mines or mills for a period of at least one year and

1 submits written medical documentation that such in-  
2 dividual, after such exposure, developed a nonmalignant  
3 respiratory disease or other medical condition  
4 associated with uranium mining or milling,  
5 shall receive up to \$200,000 if the claim for such payment  
6 is filed with the Attorney General by or on behalf of such  
7 individual and the Attorney General determines, in accordance  
8 with section 6, that the claim meets the requirements  
9 of this Act. Payments under made under this subsection  
10 may be made only in accordance with section 6.”.

11 (e) CLAIMS RELATED TO HUMAN USE RESEARCH,  
12 OTHER WORK-RELATED DEATH CLAIMS.—Section 5 is  
13 amended by redesignating subsection (b), as amended by  
14 subsection (a)(3), as subsection (d) and by inserting after  
15 subsection (a) the following:

16 “(b) CLAIMS RELATING TO HUMAN USE RESEARCH  
17 AND DEATH RESULTING FROM NONRADIOLOGICAL  
18 CAUSES.—Any individual who was employed in a uranium  
19 mine or mill located in any State referred to in subsection  
20 (a) at any time during the period referred to therein, and  
21 who—

22 “(1) in the course of such employment, without  
23 the individual’s knowledge or informed consent, was  
24 intentionally exposed to radiation for purposes of  
25 testing, research, study, or experimentation by the

1 Federal Government or any agency thereof to deter-  
2 mine the effects of such exposure on the human  
3 body, or

4 “(2) suffered death, not otherwise compensable  
5 under subsection (a), arising out of or in the course  
6 of the individual’s employment,  
7 shall receive \$50,000, if the claim for such payment is  
8 filed with the Attorney General by or on behalf of such  
9 individual and the Attorney General determines, in accord-  
10 ance with section 6, that the claim meets the requirements  
11 of this Act. Payments under this subsection may be made  
12 only in accordance with section 6.”.

13 (f) OTHER INJURY OR DISABILITY.—Section 5 (as  
14 amended by subsection (e)) is amended by adding after  
15 subsection (b) the following:

16 “(c) OTHER INJURY OR DISABILITY.—Any individual  
17 who was employed in a uranium mine or mill located in  
18 any State referred to in subsection (a) at any time during  
19 the period referred to therein, and who submits written  
20 medical documentation that such individual suffered in-  
21 jury or disability, not otherwise compensable under sub-  
22 section (a), arising out of or in the course of the individ-  
23 ual’s employment, shall receive \$20,000, if the claim for  
24 such payment is filed with the Attorney General by or on  
25 behalf of such individual and the Attorney General deter-

1 mines, in accordance with section 6, that the claim meets  
2 the requirements of this Act. Payments under this sub-  
3 section may be made only in accordance with section 6.”.

4 (g) DEFINITIONS.—Subsection (d) (as so redesign-  
5 nated) of section 5 is amended—

6 (1) in paragraph (1) by striking “radiation ex-  
7 posure” and inserting “exposure to radon and radon  
8 progeny”, and by inserting after “every work day for  
9 a month,” the following: “based on a 6-day work-  
10 week,”;

11 (2) paragraph (2) is amended to read as fol-  
12 lows:

13 “(2) the term ‘working level’ means the con-  
14 centration of the short half-life daughters (progeny)  
15 of radon that will release  $(1.3 \times 10^5)$  million electron  
16 volts of alpha energy per liter of air;”;

17 (3) by striking paragraphs (3) and (4), and by  
18 adding after paragraph (2) the following:

19 “(3) the term ‘nonmalignant respiratory dis-  
20 ease’ means fibrosis of the lung, pulmonary fibrosis,  
21 corpulmonale related to pulmonary fibrosis, or mod-  
22 erate or severe silicosis or pneumoconiosis;

23 “(4) the term ‘affected Indian tribe’ means any  
24 Indian tribe, band, nation, pueblo, or other orga-  
25 nized group or community, that is recognized as eli-

1       gible for special programs and services provided by  
2       the United States to Indian tribes because of their  
3       status as Native Americans, whose people engaged  
4       in uranium mining or milling or where uranium min-  
5       ing or milling was conducted;

6               “(5) the term ‘lung cancer’ means any physio-  
7       logical condition of the lung, trachea, and bronchus  
8       that is recognized under that name or nomenclature  
9       by the National Cancer Institute, including in situ  
10      cancers;

11              “(6) the term ‘uranium mine’ means any under-  
12      ground excavation, including ‘dog holes’, as well as  
13      open pit, strip, rim, surface, or other aboveground  
14      mines, where uranium ore or vanadium-uranium ore  
15      was mined or otherwise extracted;

16              “(7) the term ‘uranium mill’ includes milling  
17      operations involving the processing of uranium ore  
18      or vanadium-uranium ore, including both carbonate  
19      and acid leach plants;

20              “(8) the term ‘course of employment’ means  
21      and shall include any period of employment in either  
22      a uranium mine or uranium mill either prior to or  
23      after December 31, 1971, or the cumulative period  
24      of employment in both a uranium mine and mill  
25      should the individual have been employed in both;



1           “(9) the term ‘written medical documentation’  
2           for purposes of proving a nonmalignant respiratory  
3           disease means, where the claimant is alive—

4                   “(A) a chest x-ray administered in accord-  
5                   ance with standard techniques and the interpre-  
6                   tive reports thereof by 2 certified ‘B’ readers  
7                   classifying the existence of the nonmalignant  
8                   respiratory disease of category 1/0 or higher ac-  
9                   cording to the ILO 1989, or subsequent revi-  
10                  sions;

11                  “(B) high resolution computed tomography  
12                  scans and interpretive reports thereof;

13                  “(C) pathology reports of tissue biopsies;

14                  “(D) pulmonary function tests indicating a  
15                  20 percent or more reduction in lung function  
16                  as defined by the American Thoracic Society; or

17                  “(E) an arterial blood gas study; and

18           “(10) the term ‘other medical condition associ-  
19           ated with uranium mining or milling’ means any  
20           medical condition associated with exposure to radi-  
21           ation, heavy metals, chemicals, or other toxic sub-  
22           stances to which miners and millers are exposed in  
23           the mining and milling of uranium.”.

1 **SEC. 5. DETERMINATION AND PAYMENT OF CLAIMS.**

2 (a) DETERMINATION AND PAYMENT OF CLAIMS,  
3 GENERALLY.—Section 6 is amended—

4 (1) in subsection (b)(1), by adding at the end  
5 the following: “All reasonable doubt with regard to  
6 whether a claim meets the requirements of this Act  
7 shall be resolved in favor of the claimant.”;

8 (2) by redesignating paragraph (2) of sub-  
9 section (b) as paragraph (5) and by inserting after  
10 paragraph (1) the following:

11 “(2) EVIDENCE.—In support of a claim for  
12 compensation under section 5 of this Act, the Attor-  
13 ney General shall permit the introduction of, and a  
14 claimant may use and rely upon, affidavits and other  
15 documentary evidence, including medical evidence, to  
16 the same extent as permitted by the Federal Rules  
17 of Evidence.

18 “(3) INTERPRETATION OF RADIOGRAPHS.—  
19 Where radiographs are required in support of a  
20 claim under section 5(a), the submission by claimant  
21 of interpretive reports thereof by at least 2 certified  
22 ‘B’ readers shall be considered conclusive. To ensure  
23 the proper interpretation of radiographs by ‘B’ read-  
24 ers, the Attorney General may establish a fair and  
25 random audit procedure.”;

1           (3) in subsection (c)(2)(A)(ii), by inserting after  
2           “uranium mine” the following: “or uranium mill”;

3           (4) in subsection (c)(2)(B)(ii), by striking “by  
4           the Federal Government” and inserting “through  
5           the Department of Veterans Affairs”;

6           (5) in subsection (d), by inserting at the end  
7           the following: “For purposes of determining when  
8           the 12 month period has run, a claim under this Act  
9           shall be deemed filed as of the date of its receipt by  
10          the Attorney General. In the event of the denial of  
11          a claim, the claimant shall be permitted a reasonable  
12          period in which to seek administrative review of the  
13          denial by the Attorney General. The Attorney Gen-  
14          eral shall make a final determination with respect to  
15          any administrative review within 90 days of the re-  
16          ceipt of the claimant’s request for such review. In  
17          the event the Attorney General fails to render a de-  
18          termination within 12 months, the claim shall be  
19          deemed awarded as a matter of law and paid.”;

20          (6) in subsection (e), by inserting after “ura-  
21          nium mine” the following: “or uranium mill”;

22          (7) in subsection (k), by inserting after “this  
23          Act” each place it occurs the following: “or any sub-  
24          sequent amendment to this Act”; and

1           (8) in subsection (l), by adding at the end the  
2           following: “In the event the reviewing court sets  
3           aside the denial of a claim under this Act as unlaw-  
4           ful, the court shall award claimant reasonable attor-  
5           ney’s fees and costs incurred with respect to the  
6           court’s review. In the event that claimant subse-  
7           quently prevails upon remand on the claimant’s  
8           claim, claimant shall be awarded 8 percent per  
9           annum on the claimant’s claim from the date of the  
10          original denial of the claim. Attorney’s fees, costs,  
11          and interest awarded pursuant to this section shall  
12          be considered costs incurred by the Attorney General  
13          and shall not be paid from the Fund, or set off  
14          against, or otherwise deducted from, any payment  
15          under this section to a claimant.”.

16          (b) FURTHERANCE OF SPECIAL TRUST RESPON-  
17          SIBILITY TO AFFECTED INDIAN TRIBES; SELF-DETER-  
18          MINATION PROGRAM ELECTION.—In furtherance of, and  
19          consistent with, the trust responsibility of the United  
20          States to Native American uranium workers recognized by  
21          the Congress upon adoption of the Radiation Exposure  
22          Compensation Act in 1990, section 6 (as amended by sub-  
23          section (a)) is amended—

24                (1) in subsection (a), by adding at the end the  
25                following: “Any such procedures shall take into con-

1       sideration and incorporate, to the fullest extent fea-  
2       sible, Native American law, tradition, and custom  
3       with respect to the submission and processing of  
4       claims by Native Americans.”;

5               (2) in subsection (b), by adding after paragraph  
6       (3) the following:

7               “(4) PULMONARY FUNCTION STANDARDS.—In  
8       determining the pulmonary impairment of a claim-  
9       ant, the Attorney General shall evaluate the degree  
10      of impairment based on ethnic-specific pulmonary  
11      function standards.”;

12              (3) in subsection (b)(5), by striking “and” at  
13      the end of subparagraph (B), by striking the period  
14      at the end of subparagraph (C) and inserting “;  
15      and”, and by inserting after subparagraph (C) the  
16      following:

17              “(D) in consultation with any affected In-  
18      dian tribe, establish guidelines for the deter-  
19      mination of claims filed by Native American  
20      uranium miners and millers pursuant to section  
21      5.”;

22              (4) by adding after paragraph (5) of subsection  
23      (b) the following:

24              “(6) SELF-DETERMINATION PROGRAM ELEC-  
25      TION.—

1           “(A) The Attorney General is authorized,  
2           upon the request of any affected Indian tribe by  
3           tribal resolution, to enter into a self-determina-  
4           tion contract or contracts pursuant to the In-  
5           dian Self-Determination and Education Assist-  
6           ance Act (25 U.S.C. 450 et seq.) with a tribal  
7           organization of any such Indian tribe to plan,  
8           conduct, and administer the disposition and  
9           award of claims under this Act insofar as mem-  
10          bers of the affected Indian tribe are concerned.

11          “(B) Upon request of an affected Indian  
12          tribe to enter into such a self-determination  
13          contract, the Attorney General shall approve or  
14          reject the request pursuant to and consistent  
15          with section 102 of such Act (25 U.S.C. 450f).  
16          Such Act shall govern in all respects both as to  
17          the approval and subsequent implementation of  
18          the self-determination contract or in the event  
19          the request for such contract is rejected.

20          “(C) Notwithstanding any other provision  
21          of law, funds authorized for use by the Attorney  
22          General to carry out the Attorney General’s  
23          functions under section 6(i) are eligible for the  
24          planning, training, implementation, and admin-  
25          istration of any self-determination contract en-

1           tered into with an affected Indian tribe pursu-  
2           ant to this section.”; and

3           (5) in subsection (c)(4), by adding at the end  
4           the following:

5                   “(D) APPLICATION OF NATIVE AMERICAN  
6           LAW.—In determining those individuals eligible  
7           to receive compensation by virtue of marriage,  
8           relationship, or survivorship, such determina-  
9           tion shall take into consideration and give effect  
10          to established law, tradition, and custom of the  
11          particular affected Indian tribe.”.

12 **SEC. 6. CHOICE OF REMEDIES.**

13          Section 7(b) is amended to read as follows:

14          “(b) CHOICE OF REMEDIES.—Payment of an award  
15          under any provision of this Act does not preclude payment  
16          of an award under any other provision of this Act, except  
17          that no individual may receive more than 1 award pay-  
18          ment for any compensable cancer or other compensable  
19          disease.”.

20 **SEC. 7. LIMITATION ON CLAIMS; RETROACTIVE APPLICA-**  
21 **TION OF AMENDMENTS.**

22          Section 8 is amended to read as follows:—

23 **“SEC. 8. LIMITATION ON CLAIMS.**

24          “(a) BAR.—A claim to which this Act applies shall  
25          be barred unless the claim is filed within 20 years of the

1 date of the enactment of the Radiation Workers Justice  
2 Act of 1998.

3 “(b) AMENDMENTS.—The amendments made by the  
4 Radiation Workers Justice Act of 1998 shall be retroactive  
5 to October 5, 1990. The amendments shall apply to any  
6 claim filed under this Act, whether accrued before or after  
7 the date of enactment of such Act, regardless of whether  
8 such claim may have been previously awarded as the result  
9 of previous filing and prior payment under this Act.”.

○